

In the High Court of Uttarakhand, at Nainital.

Criminal Misc. Application No. 692/2006

1- Sher Singh S/o Kashmir Singh,
2- Shamsher Singh S/o Budh Singh
Both R/o Kelabanwari, P.S. Bajpur,
District U.S. Nagar .. Applicants.
Versus

1- State of Uttarakhand.
2- Collector/District Magistrate, U.S. Nagar.
3- Tehsildar, Tehsil Bajpur,
District Udham Singh Nagar.. Respondents.

Sri S.K. Mandal, learned counsel for the applicants.
Sri Nandan Arya, learned A.G.A.

Hon'ble B.C. Kandpal, J.

This petition U/S 482 Cr.P.C. has been filed by the petitioners, who stood sureties on behalf of the accused Balveer Singh in Sessions Trial No. 32/1998, State Versus Balveer Singh, for quashing the proceedings of Misc. Criminal Case No. 26/2003 State Vs. Shamsher Singh and others U/S 446 Cr.P.C., pending before the Sessions Judge, Nainital.

2- Brief facts giving rise to this petition, are that the accused Balveer Singh absconded during the course of the trial, therefore, the petitioners who stood sureties on behalf of the accused, were issued notices and the trial court subsequently passed an order U/S 446 Cr.P.C.. The recovery notices were issued to the petitioners on 30-10-2002, 10-10-2003 and 28-7-2006.

3- The record shows that the petitioners produced the accused on 17-11-2003 before the trial court and moved an application before the court concerned that

the recovery proceedings initiated against the petitioners, be dropped taking into consideration that the petitioners being sureties on behalf of the accused Balveer Singh, had already produced the accused before the court concerned.

4- The record further reveals that the Sessions Trial pending against the accused Balveer Singh, ended into his acquittal, vide judgment and order dated 16-12-2003.

5- In the aforesaid circumstances, I do not think it just and proper to continue the proceedings for the recovery of the surety amounts from the petitioners, as the petitioners have already produced the accused before the trial court, who has been ultimately acquitted of the charges leveled against him.

6- Therefore, I come to the conclusion that in case if the recovery proceedings initiated against the petitioners are allowed to continue, then the same would amount to abuse of process of court.

7- In view of above, I allow the petition U/S 482 Cr.P.C. and set aside the orders dated 10-10-2003/28-7-2006, by which the recovery warrants have been issued against the petitioners. The proceedings in Misc. criminal case No. 26/2003, U/S 446 Cr.P.C., State Vs. Samsher Singh and others pending before District and Sessions Judge, Nainital are also quashed.

(B.C. Kandpal, J.)

Dated: 24-08-2006